

Chapter 18.790

TREE REMOVAL

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18.790.010 Purpose

A. **Value of trees.** After years of both natural growth and planting by residents, the City now benefits from a large number of trees. These trees of varied types add to the aesthetic beauty of the community, help clean the air, help control erosion, maintain water quality and provide noise barriers.

B. **Purposes.** The purposes of this chapter are to:

1. Encourage the preservation, planting and replacement of trees in the City;
2. Regulate the removal of trees on sensitive lands in the City to eliminate unnecessary removal of trees;
3. Provide for a tree plan for developing properties;
4. Protect sensitive lands from erosion;
5. Protect water quality;
6. Provide incentives for tree retention and protection; and
7. Regulate commercial forestry to control the removal of trees in an urban environment.

C. **Recognize need for exceptions.** The City recognizes that, notwithstanding these purposes, at the time of development it may be necessary to remove certain trees in order to accommodate structures, streets utilities, and other needed or required improvements within the development.

18.790.020 Definitions

A. **Definitions.** The following definitions apply to regulations governing the preservation and removal of trees contained in this chapter exclusively:

1. "Canopy cover" means the area above ground which is covered by the trunk and branches of the tree;
2. "Certified Arborist" means an arborist certified by the International Society of Arboriculture as a Certified Arborist;
3. "Commercial forestry" means any commercial activity relating to the establishment, management, harvest and re-establishment of forest tree species. Pertains to the removal of ten or more trees per acre within a two year period for sale. Tree removal undertaken by means of an approved tree removal plan under Section 18.790.030 is not considered commercial forestry under this definition;
4. "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown for Christmas tree production.
5. "Hazardous tree" means a tree which by reason of disease, infestation, age, or other condition presents a known and immediate hazard to persons or to public or private property;
6. "Pruning" means the cutting or trimming of a tree in a manner which is consistent with recognized tree maintenance practices;
7. "Removal" means the cutting or removing of 50 percent (50%) or more of a crown, trunk or root system of a tree, or any action which results in the loss of aesthetic or physiological viability or causes the tree to fall or be in immediate danger of falling. "Removal" shall not include pruning;

8. "Tree" means a standing woody plant, or group of such, having a trunk which is six inches or more in caliper size when measured four and a half feet Diameter Breast Height- DBH) from ground level on the uphill side;

9. "Sensitive lands" means those lands described at Chapter 18.775 of the title.

B. General rule. Except where the context clearly indicates otherwise, words in the present tense shall include the future and words in the singular shall include the plural.

18.790.030 Tree Plan Requirement

A. **Tree plan required.** A tree plan for the planting, removal and protection of trees prepared by a certified arborist shall be provided for any lot, parcel or combination of lots or parcels for which a development application for a subdivision, partition, site development review, planned development or conditional use is filed. Protection is preferred over removal wherever possible.

B. Plan requirements. The tree plan shall include the following:

1. Identification of the location, size and species of all existing trees including trees designated as significant by the city;

2. Identification of a program to save existing trees or mitigate tree removal over 12 inches In caliper. Mitigation must follow the replacement guidelines of Section 18.790.060D, in accordance with the following standards and shall be exclusive of trees required by other development code provisions for landscaping, streets and parking lots:

- a. Retention of less than 25% of existing trees over 12 inches DBH requires a mitigation program in accordance with Section 18.790.060D of no net loss of trees;

- b. Retention of from 25% to 50% of existing trees over 12 inches DBH requires that two-thirds of the trees to be removed be mitigated in accordance with Section 18.790.060D;

- c. Retention of from 50% to 75% of existing trees over 12 inches DBH requires that 50 percent of the trees to be removed be mitigated in accordance with Section 18.790.060D;

- d. Retention of 75% or greater of existing trees over 12 inches in caliper requires no mitigation.

- e. Provide credit toward mitigation for retaining existing trees between 6 and 12 inches DBH. Given 10' spacing on center, receive proper root zone protection and proper form to allow tree to grow to full maturity.

3. Identification of all trees which are proposed to be removed;

4. A protection program defining standards and methods that will be used by the applicant to protect trees during and after construction. Tree protection measures that are moved and modified without the approval of the project arborist and/or the City Forester will be reviewed by a third party certified arborist chosen by the city, but paid for by the developer or builder, to assess the impacts and to determine the course of action to remedy the tree protection infractions.

C. Subsequent tree removal. Trees removed within the period of two years prior to a development application listed above will be inventoried as part of the tree plan above and will be replaced according to Section 18.790.060D.

18.790.040 Incentives for Tree Retention

A. Incentives. To assist in the preservation and retention of existing trees, the Director may apply one or more of the following incentives as part of development review approval and the provisions of a tree plan according to:

1. Density bonus. For each 2% of canopy cover provided by existing trees over 12 inches DBH that are preserved and incorporated into a development plan, a 1% bonus may be applied to density computations of Chapter 18.715. No more than a 20% bonus may be granted for any one development. The percentage density bonus shall be applied to the number of dwelling units allowed in the underlying zone. This bonus is not applicable to trees preserved in areas of floodplain, slopes greater than 25%, drainageways, or wetlands that would otherwise be precluded from development;
2. Lot size averaging. To retain existing trees over 12 inches DBH in the development plan for any land division under Chapter 18.400, lot size may be averaged to allow lots less than the minimum lot size allowed by the underlying zone as long as the average lot area for all lots and private open space is not less than that allowed by the underlying zone. No lot area shall be less than 80% of the minimum lot size allowed in the zone;
3. Lot width and depth. To retain existing trees over 12 inches DBH in the development plan for any land division under Chapter 18.400, lot width and lot depth may be reduced up to 20% of that required by the underlying zone;
4. Commercial/industrial/civic use parking. For each 2% of canopy cover provided by existing trees over 12 inches DBH that are preserved and incorporated into a development plan for commercial, industrial or civic uses listed in Section 18.765.080, Minimum and Maximum Off-Street Parking Requirements, a 1% reduction in the amount of required parking may be granted. No more than a 20% reduction in the required amount of parking may be granted for any one development;
5. Commercial/industrial/civic use landscaping. For each 2% of canopy cover provided by existing trees over 12 inches DBH that are preserved and incorporated into a development plan, a 1% reduction in the required amount of landscaping may be granted. No more than 20% of the required amount of landscaping may be reduced for any one development.

B. Subsequent removal of a tree. Any tree preserved or retained in accordance with this section may thereafter be removed only for the reasons set out in a tree plan, in accordance with Section 18.790.030, or as a condition of approval for a conditional use, and shall not be subject to removal under any other section of this chapter. The property owner shall record a deed restriction as a condition of approval of any development permit affected by this section to the effect that such tree may be removed only if the tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this section should either die or be removed as a hazardous tree. The form of this deed restriction shall be subject to approval by the Director.

C. Site development modifications granted as incentives. A modification to development requirements granted under this section shall not conflict with any other restriction on the use of the property, including but not limited to easements and conditions of development approval. The City Engineer may adjust design modifications on the building plan to accommodate tree retention where possible and where it would not interfere with safety or increase maintenance costs.

D. Design modifications of public improvements. The City Engineer may adjust design specifications of public improvements to accommodate tree retention where possible and where it would not interfere with safety or increase maintenance costs.

18.790.050 Permit Applicability

A. Removal permit required. Tree removal permits shall be required only for the removal of any tree which is located on or in a sensitive land area as defined by Chapter 18.775. The permit for removal of a tree shall be processed as a Type I procedure, as governed by Section 18.390.030, using the following approval criteria:

1. Removal of the tree must not have a measurable negative impact on erosion, soil stability, flow of surface waters or water quality as evidenced by an erosion control plan which precludes:

- a. Deposits of mud, dirt, sediment or similar material exceeding 1/2 cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge or as a result of the action of erosion;

- b. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes where the flow of water is not filtered or captured on site using the techniques of Chapter 5 of the Washington County Unified Sewerage Agency Environmental Protection and Erosion Control rules.

2. Within stream or wetland corridors, as defined as 50 feet from the boundary of the stream or wetland, tree removal must maintain no less than a 75% canopy cover or no less than the existing canopy cover if the existing canopy cover is less than 75%.

B. Effective date of permit. A tree removal permit shall be effective for one year from the date of approval.

C. Extension. Upon written request by the applicant prior to the expiration of the existing permit, a tree removal permit shall be extended for a period of up to one year if the Director finds that the applicant is in compliance with all prior conditions of permit approval and that no material facts stated in the original application have changed.

D. Removal permit not required. A tree removal permit shall not be required for the removal of a tree which:

1. Obstructs visual clearance as defined in Chapter 18.795 of the title;
2. Is a hazardous tree;
3. Is a nuisance affecting public safety as defined in Chapter 7.40 of the Municipal Code;
4. Is used for Christmas tree production, or land registered with the Washington County Assessor's office as tax-deferred tree farm or small woodlands, but does not stand on sensitive lands.

E. Prohibition of commercial forestry. Commercial forestry as defined by Section 18.790.020 A.2., excluding D.4. above, is not permitted.

18.790.060 Illegal Tree Removal

A. Violations. The following constitute a violation of this chapter:

1. Removal of a tree:
 - a. Without a valid tree removal permit; or
 - b. In noncompliance with any condition of approval of a tree removal permit; or
 - c. In noncompliance with any condition of any City permit or development approval; or
 - d. In noncompliance with any other section of this title.
2. Breach of a condition of any City permit or development approval, which results in damage to a tree or its root system.

B. Remedies. If the Director has reason to believe that a violation of this chapter has occurred, then he or she may do any or all of the following:

1. Require the owner of the land on which the tree was located to submit sufficient documentation, which may include a written statement from a certified arborist, showing that removal of the tree was permitted by this chapter;
2. Pursuant to Section 18.390.050., initiate a hearing on revocation of the tree removal permit and/or any other permit or approval for which this chapter was an approval standard;
3. Issue a stop order pursuant to Section 18.230 of this title;
4. Issue a citation pursuant to Chapter 1.16 of the Municipal Code;
5. Take any other action allowed by law.

C. Fines. Notwithstanding any other provision of this title, any party found to be in violation of this chapter pursuant to Section 1.16 of the Municipal Code shall be subject to a civil penalty of up to \$500 and shall be required to remedy any damage caused by the violation. Such remediation shall include, but not be limited to, the following:

1. Replacement of unlawfully removed or damaged trees in accordance with Section D below; and
2. Payment of an additional civil penalty representing the estimated value of any unlawfully removed or damaged tree, as determined using the most current edition of the International Society of Arboriculture's Guide for Plant Appraisal.
3. Require the negligent party to pay all fines in addition to all costs incurred by The City related to collecting those fines.

D. Guidelines for replacement. Replacement of a tree shall take place according to the following guidelines:

1. A replacement tree shall be a substantially similar species taking into consideration site characteristics;

2. If a replacement tree of the species of the tree removed or damaged is not reasonably available, the Director may allow replacement with a different species of equivalent natural resource value;

3. If a replacement tree of the size cut is not reasonably available on the local market or would not be viable, the Director shall require replacement with more than one tree in accordance with the following formula: The number of replacement trees required shall be determined by dividing the DBH of the tree removed or damaged by the DBH of the largest reasonably available replacement trees. If this number of trees cannot be viably located on the subject property, the Director may require one or more replacement trees to be planted on other property within the City, either public property or, with the consent of the owner, private property;

4. The planting of a replacement tree shall take place in a manner reasonably calculated to allow growth to maturity.

5. Replacement trees shall be species native to the Willamette Valley, originating from a seed source within the Willamette Valley.

E. In lieu-of payment. In lieu of tree replacement under Section D above, a party may, with the consent of the Director, elect to compensate the City for its costs in performing such tree replacement. The fee in-lieu of costs would be a rates quoted by qualified landscaping and/or tree planting organizations to plant the necessary number and variety of trees required to satisfy tree mitigation obligations.

F. Exclusivity. The remedies set out in this section shall not be exclusive.!